In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1582

CARL A. JOHNSON, APPELLANT

v.

CITY OF CHEYENNE, WYOMING, ET AL.

ON APPEAL FROM THE SUPREME COURT OF WYOMING

MOTION OF THE FEDERAL RESPONDENTS TO DISMISS OR AFFIRM

Pursuant to Rule 16(1)(b) of the Rules of this Court, the federal respondents move to dismiss the appeal for want of a substantial federal question or, alternatively, to affirm the judgment of the Supreme Court of Wyoming.

This suit was brought in the state courts in Wyoming by a citizen challenging the legality of a local sewer and water bond election conducted by the City of Cheyenne, Wyoming. In addition to numerous state, county, and municipal officers, the complaint named as defendants the United States, the Department of Health, Education, and Welfare, and "Boards and Agencies interested in the bond election."

The United States Attorney filed an answer asserting that the complaint failed to state a claim against the United States on which relief could be granted, that the complaint related only to local elections with which

the agencies of the United States had "no privity," and that the court lacked personal jurisdiction over the United States because it had not been properly served. Without expressly ruling on the questions raised by the federal respondents, the Laramie County District Court granted summary judgment for all the defendants (J.S. App. A), and the Supreme Court of Wyoming affirmed, initially and upon rehearing (J.S. App. H).

The Wyoming Supreme Court held (1) that the action had not been filed in accordance with "the only method provided by statute for a bond election contest" (J.S. App. H, p. 2)—*i.e.*, a suit by five electors within 30 days after the results of the election have been determined, and (2) that the complaint did not, in any event, state a claim on which relief could be granted, because there was nothing improper about permitting voters to register on election day or tabulating absentee votes by entering them on voting machines, and because state law forecloses invalidating a bond election for irregularity unless the result would have been changed.

This appeal presents no substantial federal question, and should therefore be dismissed. Alternatively, insofar as the Wyoming Supreme Court declined to grant relief on any claim against the federal respondents, its decision is plainly correct and should be affirmed. Appellant is contesting the legality of a local election held by the authorities of the City of Cheyenne. The federal government was not in any way involved in conducting that election.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JULY 1973.